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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE, NATIONAL
SECURITY AGENCY and OFFICE OF THE
DIRECTOR OF NATIONAL
INTELLIGENCE,

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In this lawsuit, Plaintiff seeks injunctive relief to compel defendants Central Intelligence Agency (“CIA”), the Department of Defense (“DOD”), the National Security Agency (“NSA”), and the Office of the Director of National Intelligence (“ODNI”) (together, the “Defendants”) to immediately release records related to the killing of U.S. resident Jamal Khashoggi in response to Plaintiff’s properly filed FOIA requests.

2. Plaintiff is bringing this action because, to date, Defendants have not issued determinations on Plaintiff's requests within the statutorily-prescribed time limit nor disclosed any responsive records.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in this district.

PARTIES

4. The Open Society Justice Initiative ("OSJI") is an operating public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance. It is part of the Open Society Institute, a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSJI is a "person" within the meaning of 5 U.S.C. § 551(2). Disseminating information is among OSJI's core activities. To accomplish these goals, OSJI maintains a website, <http://www.justiceinitiative.org>, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications and disseminates information through quarterly email newsletters, blogs, Twitter, and Facebook.

5. Defendant CIA is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The CIA has possession and control over some or all of the requested records.

6. Defendant DOD is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The DOD has possession and control over some or all of the requested records.

7. Defendant NSA is an “agency” within the meaning of 5 U.S.C. § 552(f)(1). The NSA has possession and control over some or all of the requested records.

8. Defendant ODNI is an “agency” within the meaning of 5 U.S.C. § 552(f)(1). The ODNI has possession and control over some or all of the requested records.

STATEMENT OF FACTS

9. Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.¹ On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.² Since then, Mr. Khashoggi’s disappearance has been the subject of intense Congressional and public debate.

10. On October 10, 2018, a bipartisan group of 22 senators (including Sen. Bob Corker (R-Tenn.) and Sen. Robert Menendez (D-N.J.), the chairperson and the ranking member of the Senate Foreign Relations Committee, respectively) wrote a letter to President Trump requesting that he make a determination on the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act with respect to any foreign person responsible for a gross violation of internationally recognized human rights in relation to Mr. Khashoggi.³ Because the letter was co-signed by the two leaders of the Committee, the President is required, within 120 days of receiving the request, to determine, in the context of

¹ Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, Bloomberg (Oct. 20, 2018), https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story.html?utm_term=.b99447153753.

² *Id.*

³ Press Release, Chairman of the Senate Comm. on Foreign Relations, Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi (Oct. 10, 2018), <https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi>.

Mr. Khashoggi's case, whether one or more foreign persons has engaged in or is responsible for "extrajudicial killings, torture, or other gross violations of internationally recognized human rights"; and to submit to the two leaders a classified or unclassified report that includes "a statement of whether or not the President imposed or intends to impose sanctions with respect to the person" along with a description of any such sanctions.⁴

11. After repeatedly saying that Mr. Khashoggi had left the Consulate alive, the Saudi government finally acknowledged on October 19, 2018 that he had been killed inside the Saudi Consulate in Istanbul.⁵ CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Mr. Khashoggi's murder.⁶ On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."⁷

12. On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.⁸ He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any

⁴ Global Magnitsky Human Rights Accountability Act, § 1263(d) (22 U.S.C. § 2656 note).

⁵ Kevin Sullivan et al., *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529.

⁶ *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), <https://www.bbc.com/news/world-us-canada-45977041>.

⁷ Shane Harris et al., *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html?utm_term=.b940c2f30d5b.

⁸ Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018), <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/>.

knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn’t!”⁹ On another occasion, citing the CIA report in his possession, President Trump noted that the CIA “did not come to a conclusion” about the Crown Prince’s involvement in the murder, adding that “[t]hey have feelings certain ways, but they didn’t – I have the report.”¹⁰

13. The President’s statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President’s characterization of the CIA’s report.¹¹ When asked if the President was lying about the CIA’s conclusion, Senator Jack Reed (D-R.I.) said, “Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi.”¹² A *Wall Street Journal* editorial wrote, “we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would have written a public statement like this without so much as a grace note about America’s abiding values and principles,” and that it was “startling to see a U.S. President brag [about commercial deals with Saudi Arabia] in a statement about a bloodthirsty murder.”¹³ A State Department official who had seen the CIA’s assessment on Mr. Khashoggi’s killing

⁹ *Id.*

¹⁰ Kate Sullivan & Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), <https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html>.

¹¹ *Id.*; Karoun Dimirjian et al., *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

¹² Sullivan & Cohen, *supra* note 10.

¹³ Editorial, *Trump’s Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), <https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629>.

reportedly told ABC News that it was “blindingly obvious” that Crown Prince Mohammad bin Salman had ordered the killing and that there was “overwhelming consensus that the [Saudi] leadership is involved – no one is debating it within the government.”¹⁴ On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, “Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi’s death. No one in Saudi Arabia – most especially the Crown Prince – should escape accountability for such a heinous act.”¹⁵

14. On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.¹⁶ After that briefing, Secretary Pompeo refused to answer reporters’ questions about why Gina Haspel did not attend, and told them, “I do believe I’ve read every piece of intelligence There is no direct reporting connecting the crown prince to the order to murder Jamal Khashoggi.”¹⁷

15. Subsequent news reports suggest that Secretary Pompeo’s choice of words obscure the CIA’s conclusion that Crown Prince Mohammad bin Salman is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA’s assessment of the murder, has

¹⁴ Tara Palmeri, ‘*Blindingly obvious*’ that Saudi crown prince ordered Khashoggi murder: Source, ABC News (Nov. 20, 2018), <https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430>.

¹⁵ John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), <https://twitter.com/JohnBrennan/status/1064949331868954629>.

¹⁶ Dimirjian et al., *supra* note 11.

¹⁷ Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), <https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/>.

reported that the excerpts “state that the CIA has ‘medium-to-high confidence’ that Prince Mohammed ‘personally targeted’ Khashoggi and ‘probably ordered his death.’”¹⁸ The CIA reportedly notes in its assessment that it “‘lack[s] direct reporting of the Crown Prince issuing a kill order,’” but its “judgment on Prince Mohammed’s likely culpability . . . is based on the crown prince’s personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, ‘and his authorizing some of the same operators to violently target other opponents.’”¹⁹ The CIA assessment reportedly states, “We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman’s authorization.”²⁰

16. In a December 4, 2018 editorial in the *Wall Street Journal*, Senator Lindsey Graham (R-S.C.) said, “Given the evidence U.S. intelligence has gathered on Khashoggi’s killing, denying the crown prince’s involvement amounts to willful blindness.”²¹

17. On December 4, 2018, after CIA Director Gina Haspel briefed senators in a closed session on the Khashoggi killing, Senator Graham told reporters, “I think [Crown Prince Mohammad bin Salman is] complicit in the murder of Mr. Khashoggi to the highest level possible.”²² He said that it was clear that Secretary Pompeo and Secretary Mattis were being “good soldiers” for the White House when they briefed senators the previous week, but that their

¹⁸ Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

¹⁹ *Id.* (quoting excerpts from the report).

²⁰ *Id.*

²¹ Lindsey Graham, Editorial, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186>.

²² Eric Schmitt & Nicholas Fandos, *Saudi Prince ‘Complicit’ in Khashoggi’s Murder, Senators Say After C.I.A. Briefing*, N.Y. Times (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/us/politics/cia-senate-khashoggi-.html>.

assessments had been misleading.²³ In reference to Secretary Mattis's insistence that American officials had seen "no smoking gun" to indicate Crown Prince Mohammad bin Salman was to blame in Mr. Khashoggi's killing, Senator Graham said, "There is not a smoking gun, there's a smoking saw You have to be willfully blind [not to see it]."²⁴

18. Similarly, Senate Foreign Relations Committee Chairman Bob Corker (R.-Tenn.) told reporters, "I have zero question in my mind that the crown prince directed the murder and was kept apprised of the situation all the way through If he was in front of a jury, he would have a unanimous verdict in about 30 minutes – a guilty verdict."²⁵

19. On December 13, 2018, a bipartisan group of senators unanimously approved a resolution holding Crown Prince Mohammad Bin Salman responsible for the murder of Jamal Khashoggi.²⁶ In late December 2018, further debate centered around a video broadcast on Turkish television showing men carrying large suitcases inside the Saudi Consul General's gated residence in Istanbul, not far from the Saudi Consulate.²⁷ Turkish officials had previously said that Saudi officials had dissembled Mr. Khashoggi's body with a bone saw and carried them out of the Consulate in suitcases.²⁸ In January 2019, public debate on Mr. Khashoggi's killing

²³ *Id.*

²⁴ *Id.*

²⁵ Kristina Peterson & Nancy A. Youssef, *Senators Conclude the Saudi Crown Prince Ordered Journalist's Killing*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/bolton-calls-khashoggi-death-a-heinous-crime-1543942052>.

²⁶ Clare Foran et al., *Senate rebukes Trump, condemns Saudi crown prince for Khashoggi murder*, CNN (Dec. 13, 2018), <https://www.cnn.com/2018/12/13/politics/corker-saudi-crown-prince-khashoggi/index.html>.

²⁷ Alan Yuhas, *Video on Turkish TV Is Said to Show Khashoggi's Remains Being Moved*, N.Y. Times (Dec. 31, 2018), <https://www.nytimes.com/2018/12/31/world/middleeast/khashoggi-video-turkey.html>.

²⁸ *Id.*

continued after Netflix blocked a comedy show in Saudi Arabia critical of Crown Prince Mohammad Bin Salman and his role in Mr. Khashoggi's murder.²⁹

20. The question of accountability for Mr. Khashoggi's murder remains pressing and unresolved. On January 3, 2019, Saudi Arabia announced the opening of a criminal trial against 11 individuals accused of killing Mr. Khashoggi.³⁰ The initial court hearing on January 3, 2019 was not public and the suspects were not named. It is unclear whether high-level officials such as Saud-al Qahtani, a top aide to Crown Prince Mohammad bin Salman, who is the subject of U.S. sanctions for his suspected integral role in the murder, are among the accused.³¹ A spokesperson from the Office of the United Nations High Commissioner for Human Rights stated that the trial was "not sufficient" and called for an independent investigation with international involvement.³² The *Washington Post* Editorial Board has lambasted the trial as a "pathetically weak" measure that is a "travesty of justice."³³ As a result, the Editorial Board has called for Congressional action, urging "[t]he new Democratic leadership in the House [to]

²⁹ James Griffiths & Euan McKirdy, *Netflix pulls 'Patriot Act' episode in Saudi Arabia after it criticized official account of Khashoggi killing*, CNN (Jan. 2, 2019), <https://www.cnn.com/2019/01/01/middleeast/netflix-patriot-act-hasan-minhaj-jamal-khashoggi-intl/index.html>.

³⁰ *Jamal Khashoggi murder trial opens in Saudi Arabia*, BBC News (Jan. 3, 2019), <https://www.bbc.com/news/world-middle-east-46747332>.

³¹ Kareem Fahim, *Named as a key Saudi suspect in Khashoggi killing, former top royal adviser drops out of sight*, Wash. Post (Jan. 7, 2019), https://www.washingtonpost.com/world/named-as-a-key-saudi-suspect-in-khashoggi-killing-top-royal-adviser-drops-out-of-sight/2019/01/06/2aed0cae-0790-11e9-8942-0ef442e59094_story.html?utm_term=.81856e6c02c2.

³² *Khashoggi trial in Saudi Arabia falls short of independent, international probe needed: UN rights chief*, UN News (Jan. 4, 2019), <https://news.un.org/en/story/2019/01/1029772>.

³³ Editorial Board, *Saudi Arabia's trial for Khashoggi's murder is a travesty. Congress must insist on justice*, Wash. Post (Jan. 6, 2019), https://www.washingtonpost.com/opinions/global-opinions/saudi-arabias-trial-for-khashoggis-murder-is-a-travesty-congress-must-insist-on-justice/2019/01/06/c76531a8-1053-11e9-8938-5898adc28fa2_story.html?utm_term=.c34e0eb2d04b.

advance new measures requiring U.S. sanctions on all those responsible for the murder, including Mohammed bin Salman”³⁴

21. Senator Patrick Leahy (D.-Vt.) has stated that Senate and House committees should examine the killing and call Secretary Pompeo to testify, and incoming chair of the Foreign Affairs Committee Eliot Engel (D.-N.Y. 16th District) has committed to conducting a “top to bottom” review of U.S. relations with Saudi Arabia.³⁵

22. In a press briefing on January 4, 2019, a State Department official stated that Secretary Pompeo has “been consistent . . . to really push the two points of accountability and credibility” with Saudi Arabia but that neither “the narrative emerging from the Saudis or the legal process has yet hit that threshold of credibility and accountability.”³⁶ The official further stated that the removal of senior Saudi officials from their posts due to their involvement in the killing did not amount to holding them responsible for the killing.³⁷

23. According to the January 4, 2019 press briefing, Secretary Pompeo is planning to seek an update on Saudi Arabia’s investigation into Mr. Khashoggi’s murder, emphasize the need for a credible legal process, and press Saudi officials on diplomatic conclusions that the Kingdom has failed to sufficiently answer for the killing when he visits the country during a trip

³⁴ *Id.*

³⁵ Colum Lynch, *Getting Away with Murder*, Foreign Affairs (Jan. 4, 2019), <https://foreignpolicy.com/2019/01/04/getting-away-with-murder/>.

³⁶ Lesley Wroughton, *U.S. says has yet to see credible version of Khashoggi’s killing from Saudis*, Reuters (Jan. 4, 2019), <https://www.reuters.com/article/us-saudi-khashoggi-usa/u-s-says-has-yet-to-see-credible-version-of-khashoggis-killing-from-saudis-idUSKCN1OY19T>.

³⁷ Edward Wong, *Pompeo Plans to Press Saudi Leaders Over Killing of Jamal Khashoggi*, N.Y. Times (Jan. 4, 2019).

to the Middle East scheduled for January 8, 2019 to January 19, 2019.³⁸ However, on January 7, 2019, *Politico* reported that two people briefed on the plans for Secretary Pompeo's trip stated that Secretary Pompeo "is due to applaud Saudi Arabia" for bringing Mr. Khashoggi's killers to justice in an upcoming speech during the trip.³⁹

24. The ongoing debate in the media and in Congress over the circumstances of Mr. Khashoggi's killing indicates that it remains a matter of urgent interest to the public. The immediate release of the requested records is imperative for the public to properly and timely evaluate Congressional and Executive responses to Mr. Khashoggi's killing, including, but not limited to, President Trump's sanctions determination that is due to be submitted to the chairperson and ranking member of the Senate Foreign Relations Committee by about February 8, 2019.

PLAINTIFF'S FOIA REQUESTS

25. On December 4, 2018, Plaintiff submitted FOIA requests to all Defendants seeking disclosure of "all records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible."⁴⁰ Based on information and belief, all Defendants received the FOIA requests by December 6, 2018.

26. Plaintiff requested expedited processing of all of the requests on the ground that it is an organization "primarily engaged in disseminating information" and there is a "compelling

³⁸ Pompeo to Seek Khashoggi Case Update on Middle East trip: Statement, Reuters (Jan. 4, 2019), <https://www.voanews.com/a/pompeo-to-seek-khashoggi-case-update-on-middle-east-trip-statement/4729006.html>; Wroughton, *supra* note 36; Wong, *supra* note 37.

³⁹ Nahal Toosi, Pompeo, in Cairo speech, to rebuke Obama's Mideast vision, Politico (Jan 7. 2019), <https://www.politico.com/story/2019/01/07/pompeo-middle-east-speech-rebuke-obamas-1085570>.

⁴⁰ Copies of these requests are attached hereto as Exhibit A.

need” for the records sought because they contain information “urgent[ly]” needed to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

27. Plaintiff requested fee waivers for all of the requests on the grounds that it is a “representative of the news media” within the meaning of FOIA and that disclosure of the requested records is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II); 552(a)(4)(A)(iii).

AGENCY RESPONSES

28. By letter dated December 7, 2018, Defendant CIA acknowledged receipt of Plaintiff’s request and assigned it reference number F-2019-00604. In the same letter, the CIA informed Plaintiff that it had denied Plaintiff’s request for expedited processing and that it had, as a matter of administrative discretion, waived the fees for the request. On December 26, 2018, Plaintiff called the CIA’s FOIA requester service center and confirmed that the CIA’s FOIA services remained operational despite the government shutdown. Defendant CIA has not made a determination on Plaintiff’s request as required by FOIA and has not disclosed any responsive records.

29. To date, Defendant DOD has not responded to Plaintiff’s request. On December 26, 2018, Plaintiff called a DOD FOIA officer and confirmed that the DOD’s FOIA services remained operational despite the government shutdown. Defendant DOD has not made a determination on Plaintiff’s request as required by FOIA and has not disclosed any responsive records.

30. By letter dated December 11, 2018, Defendant NSA acknowledged receipt of Plaintiff's request and assigned it case number 105847. In the same letter, the NSA informed Plaintiff that it had denied Plaintiff's request for expedited processing and that because there would be no processing fees, it had not addressed Plaintiff's request for a fee waiver. On December 26, 2018, Plaintiff called the NSA's FOIA requester service center and confirmed that the NSA's FOIA services remained operational despite the government shutdown. Defendant NSA has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

31. By letter dated December 13, 2018, Defendant ODNI acknowledged receipt of Plaintiff's request and assigned it reference number DF-2019-00078. In the same letter, the ODNI informed Plaintiff that it had denied Plaintiff's request for expedited processing and granted Plaintiff's request for a fee waiver.

32. By email dated December 21, 2018, Defendant ODNI, purporting to "perfect" Plaintiff's request, asked Plaintiff whether it was seeking disclosure of "any and all records that mention, either directly, or indirectly the killing of Khashoggi, such as emails, that may contain a news article, or non-substantive comments from one employee to another" or "specific reports or documents created by ODNI that directly describe the killing, and the circumstances associated with the killing." ODNI informed Plaintiff that it would hold the request in abeyance for 30 days, until midnight on January 20, 2019, waiting for Plaintiff to "clarify/narrow the scope" of its request and that if ODNI had not heard from Plaintiff by then, it would "close" the request. ODNI did not inform Plaintiff of any right to appeal. By email dated December 25, 2018, Plaintiff responded that the scope of its FOIA request was clear and that it was requesting, *inter alia*, both categories of information identified by ODNI in its email. By email dated December

26, 2018, Defendant ODNI responded that it had forwarded Plaintiff's email to the ODNI/FOIA Chief, who would "review and respond to . . . [Plaintiff] directly."

33. On December 26, 2018, Plaintiff called an ODNI FOIA officer and confirmed that the ODNI's FOIA services remained operational despite the government shutdown. Defendant ODNI has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

34. Plaintiff has constructively exhausted administrative remedies on account of Defendants' failure to comply with the 20-day time limit for making a determination on Plaintiff's FOIA requests as required by FOIA.

CAUSES OF ACTION

Violation of the Freedom of Information Act for Improper Withholding of Agency Records

1. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if set forth in full.
2. Defendants have improperly withheld the requested records from Plaintiff by failing to comply with the statutory time limit for rendering a determination on Plaintiff's FOIA requests in violation of 5 U.S.C. § 552(a)(6)(A)(i) and Defendants' corresponding regulations.
3. Defendants' failure to make reasonable efforts to search for records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.
4. Defendants' failure to promptly disclose records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.
5. Defendants' failure to grant Plaintiff's requests for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.
6. Defendant DOD's failure to grant Plaintiff's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii) and Defendant's corresponding regulations.
7. Plaintiff has exhausted all applicable administrative remedies.
8. Plaintiff is entitled to injunctive relief with respect to the prompt disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657(a);
- B. Order Defendants immediately to conduct a thorough search for records responsive to Plaintiff's requests;
- C. Order Defendants immediately to process any responsive records for disclosure and produce such records to Plaintiff;
- D. Enjoin Defendants from charging Plaintiff search, review, and duplication fees relating to the requests;
- E. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- F. Grant such other relief as the Court may deem just and proper.

Dated: January 9, 2019
New York, New York

Respectfully submitted,

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